## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS DIVISION

In re: Salubrio, LLC DOUGLAS K. SMITH, M.D. Appellant

v.

ERIC B. TERRY, CHAPTER 7
TRUSTEE

Apellee,

NO. 5:21-CV-00348-XR

BANKRUPTCY CASE NO. 20-50578-RBK

## **ORDER**

On this day, the Court considered the motion to dismiss filed by Eric B. Terry, Chapter 7 Trustee ("Trustee") for the Estate of Salubrio, LLC. ECF No. 2. Trustee argues that the instant appeal, filed by Douglas K. Smith, M.D. is untimely, and this Court therefore lacks jurisdiction to hear the appeal. After careful consideration, Trustee's motion is **GRANTED**.

## **DISCUSSION**

On February 26, 2021, Dr. Smith filed an emergency Motion for Relief from Automatic Stay with the Bankruptcy Court. ECF No. 1-3, entry 473. On March 22, 2021, the Bankruptcy Court entered an order denying Dr. Smith's motion. ECF No. 1-2. On April 6, 2021, Dr. Smith filed a Notice of Appeal appealing the Bankruptcy Court's March 22 order. ECF No. 1.

28 U.S.C. § 158 requires that appeals made from decisions in a bankruptcy court be made in the time provided by Rule 8002 of the Federal Rules of Bankruptcy Procedure. Rule 8002(a)(1) states that a "notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed." FED. R. BANKR. P. 8002(a)(1). The Fifth Circuit has held that a district court may not hear appeals from a bankruptcy court order in which the

notice of appeal was not filed within the time limit set by Rule 8002(a). In re Berman-Smith, 737

F.3d 997, 1003 (5th Cir. 2013). The Rule 8002 time limit is interpreted as a jurisdictional rule, and

"[f]ederal courts must be assured of their subject matter jurisdiction at all times." In re Bass, 171

F.3d 1016, 1021 (5th Cir.1999); see also Bowles v. Russell, 551 U.S. 205, 213 (2007) (clarifying

that time limits set by statutes are jurisdictional).

Here, Dr. Smith filed the notice of appeal on April 6, 2021, fifteen (15) days after the

bankruptcy court entered the order underlying this appeal. Although Dr. Smith's appeal is only

one day late, the jurisdictional requirements are mandatory, and a district court cannot hear an

appeal over which it does not have subject matter jurisdiction. Accordingly, the Court finds that it

has no jurisdiction over the instant appeal.

**CONCLUSION** 

For the reasons stated herein, the Trustee's motion to dismiss (ECF No. 2) is **GRANTED**.

Dr. Smith's appeal is DISMISSED WITHOUT PREJUDICE for lack of jurisdiction. The

Court Clerk is **DIRECTED** to close the case.

It is so **ORDERED**.

**SIGNED** this 7th day of June, 2021.

Xavier Rodriguez

United States District Judge

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